

REPLY TO OFFICE ACTION OF 25 JANUARY 2005

SERIAL NO: 10/618,208
DOCKET NO: 149-0104US**REMARKS**

This paper is intended to be a complete response to the above-identified Office Action. It is believed no fee is due. If fees are required, however, the Commissioner is authorized to deduct the necessary charges from Deposit Account 501922/149-0104US.

Claims 29, 30 and 35 have been amended. No claims have been cancelled or added. Accordingly, claims 1-36 are currently pending in the instant patent application.

Comment Regarding Filed and Rejected Claims

The Examiner indicates that claims 1-36 are pending and rejected. Office Action at page 1 ("Summary"). As filed, the current application includes 38 claims. See application as filed and Assignee's Fee Transmittal. It is believed the "Summary" page is a typographical error as the Examiner identifies and rejects 38 claims in the body of the Office Action.

Claim Objections and Amendments

The Examiner has objected to claims 29, 30 and 35 as incorporating grammatical errors. Office Action at page 2. Claims 29, 30 and 35 have been amended in accordance with the Examiner's comments. These amendments were made to correct typographical/grammatical errors, were not made for any purpose related to statutory reasons of patentability and do not introduce new matter.

The Examiner's careful reading of the claims and identification of these grammatical errors is appreciated.

Section 102 Rejections

The Examiner has rejected claims 1-7, 9-19, 21-29 and 31-35 as allegedly being anticipated under 35 U.S.C. 102(b) by U.S. Patent 5,396,623 to McCall et al. Specifically, with respect to Independent claims 1, 13 and 25 the Examiner asserts that:

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McCall discloses: receiving a database change command (See column 6, lines 31-34); determining one or more portions of a target database that will be affected by the change command (See column 6 lines 47-50 "editing the editproc"); creating one or more shadow portions of the determined one or more portions; changing the one or more shadow portions in accordance with the change command (See column 6 lines 43-45); executing the change command against the target database (See column 6 lines 54-56) swapping the one or more shadow portions for the determined one or more portions (see column 7 lines 40-42), wherein the act of creating and changing occur before the act of executing (See column 6 lines 43-55 "steps are in order") and further wherein said database update method does not cause a user outage (See column 9 lines 35-41).

Office Action at pages 2-3 (independent claim 1), 5 (independent claim 13) and 6 (independent claim 25).

1. U.S. Patent 5,396,623 to McCall et al. ("McCall")

McCall is directed to "methods for editing the definition of a table, in a database managed by IBM's DATABASE 2 (DB2) software." McCall at col. 1, lines 8-10. Methods in accordance with McCall are described in terms of a computer program referred to as AMEND. McCall at col. 4, lines 59-62. Generically, AMEND performs the following operations:

(1) creating a shadow table (and a shadow tablespace if needed, see below), an exact copy of a target table, except the shadow table includes a desired modification wherein the modification comprises one of: (a) replacing an existing EDITPROC with a new EDITPROC; (b) adding an EDITPROC to a table that does not have an EDITPROC; or (c) adding a column to an existing table that has an EDITPROC (see FIG. 3, 310); (2) retrieving a set of information so that the desired modification can be performed (see FIG. 3, 320); (3) updating the target table attributes using the set of information so that the target table evidences the desired modification (see FIG. 3, 330); and (4) committing the modified target table to DB2 to externalize the modified target table (see FIG. 3, 340).

McCall at col. 6, lines 41-59.

As part of these generic operations, McCall explicitly teaches "issuing SQL **STOP** commands to stop the user tablespace and user database to block read and/or write

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access during the EDITPROC replacement" and, later, "**restarting** the user database and the user tablespace with standard SQL commands." McCall at col. 8, lines 12-19 (emphasis added). See also, McCall at col. 9, lines 24-39; col. 11, line 52 to col. 12, line 5; and col. 14, line 42-52. McCall also teaches copying information from shadow tables to the tables being changed, after which the shadow tables are deleted. McCall at col. 6, lines 60-62; col. 10, lines 43-48; col. 13, lines 17-25; col. 14, lines 53-61; and FIGS. 4 (element 480), 6 (element 690) and 8 (element 880).

2. Legal Principles

"For a prior art reference to anticipate in terms of 35 U.S.C. 102, every element of the claimed invention must be identically shown in a single reference." *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677, 7 U.S.P.Q.2d (BNA) 1315, 1217 (Fed. Cir. 1988). Further, the "identical invention must be shown in as complete detail as is contained in the patent claim" (*Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d (BNA) 1913, 1920 (Fed. Cir.), *cert. denied*, 493 U.S. 853 (1989)) and the "elements must be arranged as in the claim under review" (*In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d (BNA) 1566 (Fed. Cir. 1990), *reh'g denied*, 1990 U.S. App. LEXIS 19971 (Fed. Cir. 1990)). See also M.P.E.P. 2131.

3. Discussion

As an initial matter, McCall does not teach or describe a database update method that "*does not cause a user outage*" as recited in independent claims 1, 13 and 25. In fact, and as noted above, McCall explicitly calls for stopping a database during database table update operations. McCall at col. 8, lines 12-19; col. 9, lines 24-39; col. 11, line 52 to col. 12, line 5; and col. 14, line 42-52. Such operations were clearly and unambiguously described as causing a user outage. See paragraphs [0005] and [0006] in the instant application's Written Description. Accordingly, not only does McCall not

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anticipate the claimed invention, McCall expressly teaches away from the claimed invention.¹

In addition, the Examiner appears to be confusing "swapping *information from a shadow table*" (ala McCall) with the recited "*swapping the one or more shadow portions for the determined one or more portions*" (independent claims 1, 13 and 25). See, for example, McCall at col. 7, lines 40-46; col. 9, lines 53-61; and col. 11, lines 13-17. That is, in McCall the term "swap" only means that information is copied *from* a shadow table *into* a target table. McCall at col. 9, lines 53-61. This interpretation is correct because McCall teaches that the shadow tables are deleted after their information is copied into the target table. McCall at col. 6, lines 60-62; col. 10, lines 43-48; col. 13, lines 17-25; col. 14, lines 53-61; and FIGS. 4 (element 480), 6 (element 690) and 8 (element 880). In contrast, no such limitation exists in the present invention. In one embodiment, for example, the recited shadow portions "are actually incorporated into the source database, the source database partitions being replaced (by the shadow partitions) have their memory deallocated (block 600)." See paragraph [0023] and FIG. 6 in the instant application's Written Description. In this embodiment, it is the source table portion that is deleted and not the shadow table as taught by McCall.

4. Conclusion

For at least these reasons, McCall fails to teach each and every element recited in independent claims 1, 13 and 25. As a result, the Examiner has failed to present a legitimate *prima facie* anticipatory rejection under 35 U.S.C. 102. Accordingly, it is respectfully requested that the Examiner withdraw this rejection.

Each of rejected claims 2-7, 9-12, 14-19, 21-24, 26-29 and 31-35 depend from one of independent claims 1, 13 and 25. Since each independent claim is patentable

1 The Examiner cites to McCall at col. 9, lines 35-41 as support for his contention that the AMEND program does not cause a user outage. See Office Action at pages 2-3 (independent claim 1), 5 (independent claim 13) and 6 (independent claim 25). A review of this passage and its immediately prior paragraph (col. 9, lines 24-39), however, makes it clear to one of ordinary skill in the art that a user outage is created. Accordingly, the cited passage actually appears to teach the opposite of what the Examiner alleges.

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over McCall as discussed above, each of the identified dependent claims are also allowable over McCall. Accordingly, it is respectfully requested that the Examiner withdraw this rejection.

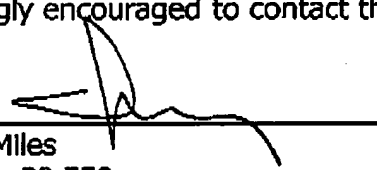
Section 103 Rejections

The Examiner has rejected claims 8, 20, 30 and 36-38 as allegedly being unpatentable under 35 U.S.C. 103(a) over U.S. Patent 5,396,623 to McCall et al. in view of U.S. Patent 5,546,536 to Davis et al. Office Action at pages 9 (claim 8) and 10 (claims 20 and 30).

Each of rejected claims 8, 20, 30 and 36-38 depend from one of Independent claims 1, 13 and 25. Since each independent claim is patentable over McCall as discussed above, each of the identified dependent claims are allowable over the combination of McCall et al. and Davis et al. Accordingly, it is respectfully requested that the Examiner withdraw this rejection.

CONCLUSIONS

Reconsideration of the pending claims 1-36, in light of the above remarks and amendments is respectfully requested. If the Examiner believes that a telephone conference would be beneficial towards advancing this case to allowance, the Examiner is strongly encouraged to contact the undersigned attorney at the number listed.


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